BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Petition for FCC Agreement in	)	
Redefining the Service Areas	)	DA 04-2111
Of Rural Telephone Companies	)	
In the State of Oregon	)	

To: Chief, Wireline Competition Bureau

REPLY COMMENTS OF U.S. CELLULAR CORPORATION

August 9, 2004

Summary

Other than CenturyTel, none of the four ILECs affected by the proposed redefinition registered timely objections to the OPUC's petition. The Oregon Telecommunications Association ("OTA"), the trade association that represents the rural ILECs in Oregon, did not object to the OPUC's request for concurrence in redefinition. The only other commenter, Oregon Tel, waited until one business day before the *reply* comment deadline to raise its novel claims.

The arguments raised by CenturyTel and Oregon Tel should be disregarded because: (1) each company committed in the OPUC docket not to oppose the OPUC's petition; (2) their comments reflect a disregard for the extensive OPUC record which addresses all of the concerns these and other ILECs raised under existing law (including the FCC's most recent interpretations as expressed in the *Virginia Cellular* and *Highland Cellular* decisions); and (3) each company merely rehashes prior comments that urge the FCC to change the law, contrary to the public interest and **after** the OPUC has conducted extensive, year-long proceedings that meet all the requirements of the law as it exists today.

The proposed redefinition along wire-center boundaries promotes the dual goals of competition and universal service, and represents the outcome of the OPUC's reasoned consideration of an extensive record. Accordingly, the FCC should decline to open a new proceeding and instead should allow USCC and RCC to begin providing universal service in the redefined areas without delay.

I. INTRODUCTION

U.S. Cellular Corporation ("U.S. Cellular"), by counsel and pursuant to the Commission's *Public Notice* dated July 12, 2004,[1] hereby provides its reply comments in support of the petition of the Oregon Public Utility Commission ("OPUC") seeking FCC concurrence with the redefinition of the service areas of several Oregon incumbent local exchange carriers ("ILECs") as provided under Section 54.207 of the FCC's rules, 47 C.F.R. Section 54.207. These reply comments respond to the single set of comments filed by CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc. ("CenturyTel"), and to the "reply comments" filed by Oregon Telephone Corporation ("Oregon Tel").

Other than CenturyTel, none of the four ILECs affected by the proposed redefinition registered timely objections to the OPUC's petition. Nor does the Oregon Telecommunications Association ("OTA"), the trade association that represents the rural ILECs in Oregon, object to the OPUC's request for concurrence in redefinition. The only other commenter, Oregon Tel, waited until one business day before the reply comment deadline to raise its objections – perhaps, to force a hasty response to its claims.

The arguments raised by CenturyTel and Oregon Tel should be disregarded because: (1) both companies committed in the OPUC docket not to oppose the OPUC's petition; (2) their comments reflect a disregard for the extensive OPUC record which addresses all of the concerns these and other ILECs raised under existing law (including the FCC's most recent interpretations as expressed in the

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[1] *The Wireline Competition Bureau Seeks Comment on Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Oregon,* Public Notice, DA-04-2111 (rel. July 12, 2004) ("*Public Notice*"). These reply comments are filed with the Chief, Wireline Competition Bureau, who has delegated authority pursuant to 47 C.F.R. Section 54.207(e).

Virginia Cellular and *Highland Cellular* decisions); and (3) each company merely rehashes prior comments that urge the FCC to change the law, contrary to the public interest and **after** the OPUC has conducted extensive, year-long proceedings that meet all the requirements of the law as it exists today.

As demonstrated below, the proposed redefinition along wire-center boundaries promotes the dual goals of competition and universal service, and represents the outcome of the OPUC's reasoned consideration of an extensive record. Accordingly, the FCC should decline to open a new proceeding and instead should allow the Companies to begin providing universal service in the redefined areas without delay.

II. DISCUSSION

A. Centurytel and Oregon Tel Have Reneged on Their Commitment to The OPUC Not To Challenge the Instant OPUC Petition for Concurrence.

As the OPUC noted in its Orders, "Even OTA agreed that if we found that the application is in the public interest and if there is no danger of cream skimming, then OTA did not object to redefining the service areas along wire center boundaries." RCC Order at 15, USCC Order at 15. This commitment not to oppose redefinition was not limited to OTA, however. CenturyTel and Oregon Tel were also parties to the OPUC dockets in their own right, and signed on to the briefs that made this commitment in both cases. Opening Brief of CenturyTel, *et al.*, Docket UM 1083 at 31-32 (Feb. 12, 2004), Opening Brief of CenturyTel, *et al.*, Docket UM 1084 at 39 (April 7, 2004).

OPUC's order meets the conditions CenturyTel and Oregon Tel set in their commitment. The Orders both found that a grant of both applications would serve the public interest and that there would be no danger of cream skimming. *See* RCC Order at 15, USCC Order at 15. It is patently unfair for CenturyTel to represent to the OPUC that it would not object to redefinition of service areas and then, after an exhaustive state-level proceeding, complain that the OPUC has "summarily dispatched" the findings required for redefinition. CenturyTel's and Oregon Tel's comments should be disregarded for this reason alone.

B. Oregon Tel's "Reply Comments" Are Untimely Comments In Disguise.

Following the release of the *Public Notice* on July 12, interested parties had two weeks in which to file comments with the FCC regarding the proposed redefinition. Rather than file by the July 26 deadline, Oregon Tel waited until August 6 – just one business day before the deadline for filing reply comments – to file its objection. This delay was certainly not due to the voluminous nature of Oregon Tel's filing, which is just over three pages long.

While Oregon Tel attempts to make its comments timely by calling them "reply comments," that label clearly does not apply to Oregon Tel's pleading, which replies to nothing in particular. Apart from generally stating its alignment with CenturyTel's opposition to the proposed redefinition – a more or less generic ILEC position – Oregon Tel's pleading introduces new facts and issues that were not raised in any party's comments. For example, Oregon Tel raises arguments regarding cream-skimming within its own service area and the merits of the construction plan approved by the OPUC as part of its public interest analysis. Whatever the motives behind Oregon Tel's timing, the novel issues raised in its pleading just one business day before the expiration of the reply comment deadline renders its labeling as "reply comments" an absurdity. Accordingly, in the absence of a request for extension or any other explanation, Oregon Tel's "reply comments" should be treated as late-filed comments and disregarded.

C. The Redefinition of Centurytel's Service Area Will Remove Artificial Barriers to Competition

The 1996 Act was enacted with the goal of opening "all telecommunications markets" to competition[2] and providing rural consumers with a choice among services comparable to those available to urban consumers.[3] Consistent with these goals, Congress provided competitive carriers that commit to provide the supported services and reach out to eligible Lifeline subscribers the means to receive high-cost support and begin chipping away at the "almost insuperable competitive advantage"[4] enjoyed by monopoly incumbent LECs.[5]

One of the most significant barriers to entry facing carriers who seek to compete with rural ILECs is the fact that competitive carriers' service areas rarely match up with ILEC study areas, which constitute the default "service area" definition for ILECs. Congress provided a means for removing this obstacle in Section 214(e)(5), which enables "the Commission and the States, after taking into account recommendations of a Federal-State Joint Board ... [to] establish a different definition of

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2 *See* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113.

3 *See* 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas").

4 *See Verizon Communications, Inc. v. FCC,* 122 S.Ct. 1646, 1662 (2002).

5 *See* 47 U.S.C. § 214(e)(2) (permitting the designation of competitive carriers as eligible telecommunications carriers both in areas served by rural telephone companies and in all other areas). *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order,* 11 FCC Rcd 15499, 15506-07 (1996), *subseq. hist. omitted* ("*Local Competition Order*") ("The present universal service system is incompatible with the statutory mandate to introduce efficient competition into local markets, because the current system distorts competition in those markets. For example, without universal service reform, facilities-based entrants would be forced to compete against monopoly providers that enjoy not only the technical, economic, and marketing advantages of incumbency, but also subsidies that are provided only to the incumbents.")

service area" for ILECs[6] Perhaps the most important recommendation issued by the Joint Board was the following:

> We recommend that the Commission encourage states, where appropriate to foster competition, to designate service areas that do not disadvantage new entrants. Consequently, we recommend that **the geographic size of the state designated service areas should not be unreasonably large**. An unreasonably large area may deter entry because fewer competitors may be able to cover start-up costs that increase as the size of the area they must serve increases . . . Additionally, if states simply structure service areas to fit the contours of an incumbent's facilities, a new entrant, especially a CMRS-based provider, might find it difficult to conform its signal or service area to the precise contours of the incumbent's area.[7]

The OPUC's proposal to redefine ILEC service areas presents a solution to precisely the sort of competitive disparity Section 214(e)(5) was designed to address. A wireless service provider cannot hope to cover all of the wire centers of a company such as CenturyTel in a state like Oregon.[8] CenturyTel's wire centers are literally scattered from north to south and east to west, border to border, in a huge western state—the tenth largest in the Union. *Id*. CenturyTel has 55 wire centers in Oregon. *Id*. Not only are they not all contiguous, they are scattered into almost 20 separate clusters. *Id*. Many of the wire centers and clusters are separated by large mountain ranges and hundreds of square miles of desert where the largest structures are barbed wire fence posts.

CenturyTel's current study areas in Oregon are perhaps perfect examples of an "unreasonably large" geographic area. Accordingly, redefinition here is essential to "remove[] a critical

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6 47 U.S.C. § 214(e)(5).

7 *Federal-State Joint Board on Universal Service, Recommended Decision,* 12 FCC Rcd 87, 181 (Jt. Bd. 1996) ("*1996 Recommended Decision*") (emphasis added).

8 *See, e.g.,* RCC Order, Appendix A, and USCC Order, Appendix A.

obstacle to competition" by enabling the carriers to be designated in all of their licensed areas and begin to compete with high-cost support on equal terms with the ILECs.[9]

Having already determined that designation of RCC and USCC throughout their respective Oregon service areas is in the public interest, the OPUC seeks FCC concurrence to allow its designation to take effect in areas served by CenturyTel, Cascade Telephone Company, Oregon Telephone Company, and Sprint/United Telephone Company. Plainly, therefore, a decision by the FCC to allow the proposed redefinition to take effect will advance the pro-competitive goals established by Congress in 1996 by removing barriers to competitive entry.[10] It will also enable RCC and USCC to begin using high-cost support to build facilities and make network improvements that will allow rural consumers to begin to enjoy a similar level of service and competitive choice that exists in urban and suburban areas.[11]

CenturyTel has raised absolutely nothing in this or any of the prior redefinition proceedings that properly qualify as novel issues of fact or law. Instead, CenturyTel has simply rehashed the same arguments that have failed time and again in state proceedings. Moreover, CenturyTel's professed concern for consumer welfare is disingenuous: while complaining that redefinition "denies competitive choice" to consumers in selected rural ILEC wire centers,[12] Centurytel's solution is, ironically, to deny competitive choice ***to all consumers*** in a rural ILEC's service area. CenturyTel's opposition can therefore be boiled down to one issue: ILEC protectionism.

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[9] Petition at p. 10.

[10] *See* Western Wireless Comments at p. 3.

[11] *See* 47 U.S.C. § 254(b)(3).

[12] CenturyTel Comments at p. 4.

Yet this has been rejected in federal court as a valid consideration in interpreting the Act's universal service provisions.[13]

A few recent service area redefinition proposals have been held up at the FCC level. Predictably, CenturyTel cites the resulting delays with approval and urges denial of OPUC's petition based on what it hopes the law will become some day in the future. What CenturyTel ignores, however, is that the records in the OPUC dockets at issue here fully met every test and requirement that FCC itself has applied in recent redefinition cases, including *Virginia Cellular* and *Highland Cellular,* [14] Rural consumers in Oregon would be well-served by an FCC decision that follows the lead of several states[15] and recognizes that redefinition is critical to both promoting competition and advancing universal service to rural America, as envisioned by Congress.

D. The Petition And The Record At The State Level Provide Ample Evidence That The Opuc's Proposal Takes The Joint Board's Recommendations Into Account.

The requirements for redefining a rural ILEC service area are straightforward. Specifically, under Section 214(e)(5), a service area may be redefined as something other than an ILEC's study area if "the Commission and the States, after taking into account recommendations of a

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[13] *See Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 621 (D.C. Cir. 2000). ("The purpose of universal service is to benefit the customer, not the carrier. 'Sufficient' funding of the customer's right to adequate telephone service can be achieved regardless of which carrier ultimately receives the subsidy.").

[14] *Virginia Cellular, LLC,* 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*"); *Highland Cellular, Inc.,* 19 FCC Rcd 6422 (2004) ("*Highland Cellular*").

[15] *See, e.g.,* Petition by the Public Utilities Commission of the State of Colorado to Redefine the Service Area of CenturyTel of Eagle, Inc., Pursuant to 47 C.F.R. § 54.207(c) at 5 (filed with the FCC Aug. 1, 2002, effective date Nov. 24, 2002) ("CPUC Petition") ("[N]o company could receive designation as a competitive ETC unless it is able to provide service in 53 separate, non-contiguous wire centers located across the entirety of Colorado . . . [T]his constitutes a significant barrier to entry."); Verizon Wireless N. Dakota Order, *supra,* at p. 12 ("A . . .law that would be construed to deny designation of federal ETC status based on a study area requirement could essentially prohibit [a competitor's] ability to provide the supported services. . . The [North Dakota] Commission's action to redefine the service area requirement as requested by [Verizon Wireless] is necessary to facilitate the granting of the federal ETC to [Verizon Wireless] in the areas of the rural telephone companies' service areas that fall within Verizon Wireless' CMRS licensed areas.")

Federal-State Joint Board ... establish a different definition of service area for such company."[16] After a state has conducted its own analysis and concluded that redefinition is justified, the state commission or another party must seek the FCC's concurrence by submitting a petition that includes: (1) a description of the proposed redefinition; and (2) the state commission's ruling or other statement presenting the reasons for the proposed redefinition, including an analysis that takes the Joint Board's recommendations into account.[17]

Consistent with this requirement, the Petition provided both a description of the proposed redefinition[18] and an analysis of the proposed redefinition under the framework provided in the Joint Board's recommendations. Specifically, with regard to the Joint Board's recommendations, the Petition explains that (1) the Joint Board's concerns regarding uneconomic receipt of high levels of support in low-cost areas (commonly referred to as "cream skimming") are minimized, if not eliminated, by the rural ILECs' ability to disaggregate and target support on a more granular level than the entire study area;[19] (2) the proposed redefinition takes into account the special status of rural carriers under the Act;[20] and (3) the proposed redefinition will not impose any undue administrative burden on the affected rural ILECs, since they already have the ability to calculate support down to the wire-center level (and many in fact have already done so).[21] The Petition also provided the full text of the designation orders describing the proceedings below, which laid the groundwork and provided a sound basis for the OPUC's service area redefinition proposal.

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16 47 U.S.C. § 214(e)(5).

17 47 C.F.R. § 54.207(c)(1).

18 *See* Petition at p. 1.

19 *See* Petition at pp. 11-12.

20 *See id.* at p. 13.

21 *See id*.

Unlike recent FCC grants of ETC status, the OPUC conducted full-blown adjudicative proceedings on the applications of RCC and USCC for ETC designation and redefinition in front of an administrative law judge. The proceedings were designed both to fully develop all relevant facts and to ensure that opponents—CenturyTel plus all other affected rural ILECs in Oregon[22]—to develop as extensive a record as they desired in opposition to RCC's and USCC's applications. Both cases took over a year to litigate from application to final order. In each docket there were at least a dozen witnesses with hundreds of pages of pre-filed written testimony and exhibits. One of the witnesses works with CenturyTel. In addition to the pre-filed testimony and exhibits, there were numerous cross-examination exhibits entered during the hearings.

The OPUC Staff participated in an advocacy role for the public and the public interest. Initially the Staff conditionally opposed both applications, based on some of the same concerns that Centurytel raised. As RCC and USCC addressed those concerns, Staff then supported granting both applications. Additionally, after the FCC issued its *Virginia Cellular* and *Highland Cellular* orders, Staff again expressed reservations about the applications, recommending that the OPUC review them under the standards articulated in those decisions. Once RCC and USCC demonstrated that the record in Dockets UM 1083 and UM 1084 supported the FCC's approach in those cases, the Staff again supported RCC's and USCC's applications.

There were **three** rounds of post-hearing briefs in each case. OTA and CenturyTel filed briefs in all three rounds, including two rounds of briefing that were specifically addressed to ensuring that the OPUC's final orders would be consistent with *Highland Cellular*. All three Commissioners heard oral argument of all the parties in both cases before the OPUC issued its final decisions. The

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[22] Through their trade association, OTA, as well as individually. Sprint/United, though a party to the cases, did not oppose the ETC grants.

decisions are based solely on the records in the dockets, as no *ex parte* contacts were permitted between the parties and the judge or the Commissioners.

E. Centurytel's Arguments Regarding Density Data Are Misguided and Ignores the Fact that the Records Below Include Density Data.

CenturyTel wrongly suggests that there is insufficient information in the record to evaluate whether the Petition raises cream-skimming concerns. CenturyTel's demand for a density analysis is already part of the OPUC's record in both the RCC and USCC dockets. Attachment A hereto contains spreadsheets the OPUC considered in granting RCC's and USCC's ETC applications. These spreadsheets calculate the density based on number of access lines per square mile.[23] The OPUC's record shows that the wire centers for which USCC did **not** seek ETC designation are nearly twice as dense as the wire centers where USCC was granted ETC status. There are 3.67 access lines per square mile in the wire centers USCC did not apply for versus only 2.37 access lines per square mile in the wire centers for which USCC received ETC designation. The average density of all CenturyTel's wire centers is also more than twice that of the wire centers that USCC will serve as an ETC, 6.04 versus 2.37 lines per square mile. As in the case of RCC,[24] the eight most dense wire centers of CenturyTel[25] based on access lines per square mile are <u>all</u> outside of USCC's ETC area. Indeed, of the 34 wire centers that USCC will serve in their entirety, only three have an access line per square mile density in excess of

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[23] In *Highland Cellular*, the FCC used population density as a proxy for costs. Although RCC and USCC submit that actual cost data (as cited in the OPUC's orders) is always preferable to a cost proxy, the fact is that line density data is a better proxy for ILEC costs than population density, since the main component in ILEC's costs is the loop, which bears a direct relationship to line density and only an indirect relationship to population density.

[24] *See* Reply Comments of RCC Minnesota, Inc., also filed today.

[25] Aurora/Charbonneau, Creswell, Depoe Bay, Gleneden Beach, Knappa, Lebanon, and Scapoose.

10.[26] In contrast, of the 22 wire centers that USCC did not propose to serve, 9 have densities of at least 10 access lines per square, 6 of which have more that 50 customers per square mile.

Oregon Tel similarly is mistaken in its assertion that the proposed redefinition of its service area would result in "de facto cream skimming by USCC." This issue was directly addressed by USCC in the proceeding below as follows:

> While the Attachment shows that the three wire centers served by USCC are slightly more populated than those it will not serve, it also shows that the wire centers served by USCC have an average of 1.3 households per square mile, compared with an average of 1.2 households per square mile in all Oregon Telephone wire centers. It would be extremely difficult to conclude from this data that "cream skimming" would result. None of these wire centers could be characterized as low-cost.[27]

The OPUC agreed, concluding that:

> USCC proposes to serve the two most densely populated, and one of the least densely populated, wire centers. But even here, Oregon Tel has five wire centers, which range from 0.3 to 3 households per square mile. The average is 1.2 households per square mile; USCC proposes to serve an area with 1.3 households per square mile. We find that this does not amount to cream-skimming.[28]

Indeed, as with the FCC's approval of Virginia Cellular's partial coverage of the MGW service area, the portions of Oregon Tel's service area covered by USCC's ETC service area are only slightly more dense than those that are not covered.[29] As USCC stated in its Closing Brief in the OPUC proceeding, "there is simply no cream to skim in Oregon Telephone's study area."

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[26] Burns,John Day and Drain.

[27] Closing Brief of U.S. Cellular Corporation.

[28] USCC Order at pp. 11-12.

[29] *See Virginia Cellular, supra,* 19 FCC Rcd at 1579.

The density data in the OPUC's RCC and USCC dockets obviates any need for the FCC hold up concurrence with the OPUC and conclusively establishes that OPUC's grant of ETC status to RCC and USCC in the CenturyTel wire centers cannot possibly have the effect of cream-skimming.

F. Centurytel and Oregon Tel Improperly Seek To Reopen the State's Public Interest Analysis.

By arguing that "population density data" is needed for the FCC to evaluate cream-skimming concerns,[30] CenturyTel incorrectly blurs the line between designation under Section 214(e)(2) and redefinition under Section 214(e)(5). In an ETC designation proceeding, the state commission may properly consider whether the requesting carrier is picking and choosing target areas in which it will receive uneconomically high levels of support. As discussed above, the OPUC undertook the relevant analysis with respect to both RCC and USCC and determined that neither carrier was likely to do so.[31]

Service area redefinition, on the other hand, does not concern an individual carrier's ability to "cream skim." Once service areas are redefined, other competitors may be designated in those areas without the need for further redefinition, and without the need for FCC concurrence. Because service area redefinition removes entry barriers for all current and future competitors in a given rural ILEC's service area, an analysis of the impact of designating any particular competitive ETCs is simply not warranted under the redefinition framework provided by the FCC's rules.

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30 CenturyTel Comments at p. 5.

31 *See* Petition at p. 11.

For that reason, the Joint Board did not recommend an analysis of whether an individual carrier would cream-skim, but the much broader question of whether cream-skimming "by potential competitors" has been minimized.[32] This question was resolved once and for all in 2001, when the FCC concluded in its *Fourteenth Report and Order* that "as a general matter, support should be disaggregated and targeted below the study area level" and provided rural ILECs with a streamlined, administratively simple means of doing so.[33] Because "rural telephone companies now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service[,]. . . any concern regarding 'cream-skimming' . . . has been substantially eliminated."[34]

Oregon Tel's attempt to drag fully litigated public-interest issues before the FCC by questioning USCC's build-out commitments should similarly be rejected. Suffice it to say that, in the proceeding below, Oregon Tel's arguments in this regard were shown to be utterly without merit. More importantly for present purposes, the merits of a network build-out proposal approved by a state commission as part of the public interest test is simply not appropriately raised in a redefinition proceeding.

When a state commission has designated a competitor after determining that cream-skimming and other harms will not result, the FCC must respect that decision made validly under Section 214(e)(2). Indeed, as noted above, both CenturyTel and Oregon Tel stated

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32 *1996 Recommended Decision, supra,* 12 FCC Rcd at 179-80.

33 *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking,* 16 FCC Rcd 11244, 11302 (2001) ("*Fourteenth Report and Order*").

34 *Western Wireless Corp.,* 16 FCC Rcd 18133, 18141 (2001) ("*Pine Ridge*").

that they would not object to the proposed redefinition if the OPUC found RCC's and USCC's designation in rural areas to be in the public interest and if there is no danger of cream-skimming.[35] The OPUC has spoken on both of those issues, and the FCC lacks authority to review those findings lawfully made by the state pursuant to its exclusive jurisdiction under Section 214(e)(2) of the Act. CenturyTel's attempt to re-litigate public interest issues before the FCC must be rejected.

G. Centurytel Cannot Hide Behind Its Anticompetitive Disaggregation Choices.

CenturyTel argues, disingenuously, that because its wire center costs vary widely in Oregon, competitors can "target only the most profitable wire centers." This alleged problem is of CenturyTel's own making and is aimed only at forestalling competition in its service area. As CenturyTel admits, it "elected" to disaggregate its 55 Oregon wire centers into only two zones, *even though it had the ability to calculate costs down to the wire center level*.[36] Clearly, RCC and USCC did not "target" the low cost zones. Indeed, RCC and USCC have committed to serving their entire respective CGSA footprints, which happen to cover CenturyTel's highest-cost, lowest-density wire centers. But again assuming, for the sake of argument, that some future hypothetical competitor "targets" CenturyTel's lower cost wire centers, CenturyTel is empowered to disaggregate further.

To characterize CenturyTel's "problem" of disaggregating into only two cost zones as a self-inflicted wound would be charitable. In reality, it is a blatant attempt by

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35 *See* RCC Order at p. 15; USCC Order at p. 15.

36 *See* CenturyTel Comments at p. 4 ("Although CenturyTel was able to calculate relative cost down to the exchange, which in the case of Oregon is the wire center, support was established based on two support zones – not 55.").

CenturyTel to use its own decisions about how to disaggregate its support to try to erect a barrier to competitive ETC designations.

H. No Written Order Or Other 'Physical Evidence' Is Needed.

CenturyTel's calls for a written FCC decision[37] are groundless. Recognizing that a competitive carrier may be disadvantaged if a mismatch of service areas forces it to compete against ILECs without the aid of high-cost support, the Commission sensibly devised a streamlined procedure to redefine rural service areas in a way that properly takes the Joint Board's recommendations into account and "minimize[s] administrative delay".[38] By providing interested parties with an opportunity to comment on a state's proposed redefinition, this procedure ensures that any concerns, including those relating to the Joint Board's recommendations, are fully considered before the Commission concurs with the proposal.

Consistent with the plain language of Section 214(e)(5), the FCC's redefinition rules do not require a proceeding or a written order. By allowing the redefinition to take effect automatically if no action is taken within 90 days, the procedure ensures that universal service and competition will not be unduly hindered by lengthy proceedings. On multiple occasions, the Commission has utilized this procedure to consider requests for concurrence with proposed rural ILEC service area redefinitions and granted its concurrence, allowing the redefinition to take effect.[39] CenturyTel has presented no valid argument that would warrant a different approach here. Accordingly, CenturyTel's invitation for additional paper and delays should be rejected.

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[37] *See id.* at p. 2.

[38] *See* 47 C.F.R. § 54.207(c)(3); *Federal-State Joint Board on Universal Service, First Report and Order,* 12 FCC Rcd 8776, 8881 (1997) ("*First Report and Order*").

[39] *See, e.g., Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. on Tribal Lands within the State of Arizona*, DA 01-409 (WCB rel. Feb. 15, 2001); *Smith Bagley,*

I. There Is No Basis For Centurytel's Request To Delay Consideration Pending The Commission's Consideration Of Rule Changes.

Finding the FCC's current rules and policies unsatisfactory, CenturyTel seeks to place competitive entry in suspended animation in hopes that the rules will one day change in its favor. If litigants could stay the effectiveness of every rule that has some chance of being amended in the future (*i.e.,* every rule), the rulemaking and enforcement authority granted to the FCC by statute would be rendered meaningless. CenturyTel's request should be recognized for what it is: a plea for protection from competitive entry, or alternatively, a delay in having a competitor receive high-cost support so it can compete on fair terms.

The protracted delay sought by CenturyTel is simply not fair to the competitive ETCs in Oregon or to the rural consumers who are waiting for high-cost support to commence. Nor is it fair to the OPUC to change the rules of the game after the OPUC has conducted over a year of protracted litigation. The OPUC made every effort to address not only the law as it was, but the nuances in the latest FCC decisions in entering its orders. The OPUC even went to far as to authorize the parties to file two additional rounds of briefing in both dockets to address issues allegedly raised by *Highland Cellular*.

There is no legitimate reason for the FCC to second-guess the state's reasoned decision to redefine ILEC service areas, or to delay the introduction of competition in areas that badly need it.

Inc. Petitions to Redefine the Service Area of Table Top Telephone Company on Tribal Lands within the State of Arizona, DA 01-814 (WCB rel. April 2, 2001); *Smith Bagley, Inc. Petitions to Redefine the Service Area of CenturyTel of the Southwest, Inc. in the State of New Mexico*, DA 02-602 (WCB rel. March 13, 2002).

I. CONCLUSION

The OPUC has properly exercised its statutory authority in determining that the public interest would be served by designating RCC and USCC throughout their licensed service areas in Oregon. The OPUC's Petition fully satisfies the standard for redefinition under the Act and the FCC's rules, and the only objections came from a party that had previously committed not to raise any. USCC, RCC and Oregon's rural consumers are awaiting FCC concurrence so that the OPUC's intent may be fulfilled. USCC respectfully request the FCC to respect OPUC's considered judgment and decline to open a proceeding, and to concur with the redefinition requested by OPUC so that rural consumers can start to benefit from high-cost support in those areas at the earliest possible date.

Respectfully submitted,

U.S. CELLULAR CORPORATION

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